Hagood v. *Southern*, 117 U. S. 52; *In re Ayres*, 123 U. S. 443. But it is immaterial whether they administer an unconstitutional law, or tortiously administer a valid one. *Truax* v. *Raich*, 239 U. S. 33; *Raymond* v. *Chicago Traction Co.*, *supra*. Where the federal question raised is not merely colorable the federal court acquires jurisdiction, and can decide the case on state questions. Nor will it lose its jurisdiction of the case by omitting to decide the federal question, even when upon the state questions relief could be had in the state courts. *Siler* v. *Louisville, etc. R. Co.*, 213 U. S. 175; *Michigan Central R.* v. *Vreeland*, 227 U. S. 59; *Louisville Trust Co.* v. *Stone*, 107 Fed. 305. In the principal case the plaintiff was entitled under the state laws and constitution to the relief sought. *Cummings* v. *Merchants Nat. Bank*, 101 U. S. 153; *Taylor* v. *Louisville, etc. R. Co.*, 88 Fed. 350. The jurisdiction of the court being established, therefore, there could be no dispute as to the propriety of the injunction. See 1 FOSTER, FEDERAL PRACTICE, 5 ed., 325, note 25.

CONSTITUTIONAL LAW — POWERS OF LEGISLATURE — IMPLIED POWERS — AUTHORIZATION OF NATIONAL BANKS TO ACT AS EXECUTOR. — The Federal Reserve Act provides that the Federal Reserve Board may "grant by special permit to national banks applying therefor, when not in contravention of state or local law, the right to act as trustee, executor, administrator or registrar of stocks and bonds" (38 Stat. at L. 251, 253, c. 6). *Held*, that the act is constitutional. *First National Bank* v. *Fellows*, 37 Sup. Ct. Rep. 734.

The general doctrine that Congress may properly authorize national banks to carry on such functions as are necessary to their existence as efficient governmental agencies must be accepted as firmly established. *Osborn* v. *Bank*, 9 Wheat. (U. S.) 738. *Cf. Legal Tender Cases*, 12 Wall. (U. S.) 457; *United States* v. *Marigold*, 9 How. (U. S.) 560. In the principal case the court interprets and extends this doctrine to permit the exercise by national banks, under federal authorization alone, of any functions necessary to enable them "effectively to compete with state banking corporations." And the provision in the statute that such right is to be granted only when not in contravention of state law does not weaken the force of the decision as an authority for the broad principle laid down. For unless such additional powers are necessary and proper for the effective maintenance of this federal agency they cannot constitutionally be granted at all. See *Martin* v. *Hunter's Lessee*, 1 Wheat. (U. S.) 304, 326; *McCullough* v. *Maryland*, 4 Wheat. (U. S.) 316, 405. And if such powers are necessary, state law cannot stand in the way. *M'Cullough* v. *Maryland*, *supra; Easton* v. *Iowa*, 188 U. S. 220; *Tennessee* v. *Davis*, 100 U. S. 257. It would seem, however, that some limit must exist to the power of the federal government to invade fields of state control through the gateway of the national bank. And on this ground the courts of Illinois and Michigan held the provision unconstitutional. *People* v. *Brady*, 271 Ill. 100, 110 N. E. 864; *Fellows* v. *First Nat. Bank*, 159 N. W. (Mich.) 335. The power to control the distribution of property, to determine the duties and qualifications of executors and administrators, has hitherto been held to lie exclusively within the jurisdiction of the separate states. *United States* v. *Fox*, 94 U. S. 315; *Brown* v. *Fletcher's Estate*, 210 U. S. 82. To admit that Congress may grant these new powers to national banks means also that the federal government may, if it pleases, control these activities to the exclusion of the states. For the private, as well as the public, functions of a national bank are potentially free from state taxation or regulation. *Osborn* v. *Bank, supra; Farmers,' etc. Bank* v. *Dearing*, 91 U. S. 29; *Davis* v. *Elmira Savings Bank*, 161 U. S. 275; *Owensboro Nat. Bank* v. *Owensboro*, 173 U. S. 664. This seems to be the law in spite of a sound *dictum* by the court in the principal case that state regulations, if not discriminatory, would be controlling in the exercise of such business. See TIFFANY, BANKS AND BANKING, § 93. If these fields can thus be invaded by

the federal government it is doubtful whether any branch of economic life can permanently remain within the control of the states. The doctrine of *Osborn* v. *Bank* must, then, be applied with caution. Congress should be permitted to authorize federal agencies to engage in incidental private activities only when clearly essential, and not when merely appropriate, to the continued performance of their governmental functions. See *Osborn* v. *Bank*, *supra*, 861.

CONSTITUTIONAL LAW — THE RIGHT TO VOTE — STATUTE UNCONSTITUTIONAL IN PART — WHO MAY SET UP UNCONSTITUTIONALITY. — A statute provided that "all ballots shall be void which do not contain first-choice votes for as many candidates as there are offices to be filled" (1914, NEW JERSEY LAWS, 174). In accordance with this enough ballots were rejected to cause the defeat of the relator and the election of the respondent. The relator brought an information in the nature of *quo warranto*, contending that this provision was a violation of the constitutional guarantee of the right to vote. *Held*, that the court will not decide the question of constitutionality, for if the contested clause is unconstitutional the whole statute must fail and the election will be void, so the relator can have no title to the office in any event. *Daly* v. *Garven*, 101 Atl. 272 (N. J.).

The clause in question would seem to be a mere regulation of the manner in which the right to vote is to be exercised, and therefore constitutional. *Farrell* v. *Hicken*, 125 Minn. 407, 147 N. W. 815. *Cf. Adams* v. *Landsdon*, 18 Idaho 483, 110 Pac. 280. Wherever possible a court will avoid passing on the question of constitutionality. *Sayles* v. *Walla Walla County*, 30 Wash. 194, 70 Pac. 256. But assuming that the clause is unconstitutional, the question arises whether the remainder of the statute is separable or must fall with it. The proper test is whether the statute with the unconstitutional part exscinded conforms to the legislature's intent in passing it and may be maintained without that part. *Spraigue* v. *Thompson*, 118 U. S. 90; *Reed* v. *Omnibus R. R. Co.*, 33 Cal. 212. See 20 HARV. L. REV. 495. When part of an act fails, no presumption exists in favor of the remainder. *South, etc. Alabama R. Co.* v. *Morris*, 65 Ala. 193. See COOLEY, CONSTITUTIONAL LIMITATIONS, 248 *n.* But nevertheless the decision on this point seems too strict. *Cf. O'Brien* v. *Krenz*, 36 Minn. 136. If the whole statute falls, however, the election is void and the relator has no title. He cannot therefore attack the title of the respondent. *Manahan* v. *Watts*, 64 N. J. L. 465, 45 Atl. 813. But even if the provision is separable the decision of the case is probably right, as the presence on the official ballot of a statement that ballots not complying with an unconstitutional regulation would be thrown out might well be held sufficient cause for avoiding the election, since it would be impossible to determine what the result would have been but for that statement. *Cf. Jones* v. *Glidewell*, 53 Ark. 161.

HUSBAND AND WIFE — COMMUNITY PROPERTY — LIABILITY OF COMMUNITY PERSONALTY FOR THE TORT OF THE HUSBAND. — The plaintiff sought to subject the community personal property to execution in order to satisfy a judgment for the husband's tort, not committed in the management of the community property. *Held*, that the community personal property is not liable. *Schramm* v. *Steele*, 166 Pac. 634 (Wash.).

The general principle underlying the system of community property, which is recognized in eight American states, is that all acquisitions of a husband and his wife during marriage belong beneficially to both. See BALLINGER, COMMUNITY PROPERTY, chap. 1; 24 HARV. L. REV. 652. In general the community property is liable for the separate debts of the husband, as its management and disposition are vested solely in him. *Davis* v. *Compton*, 13 La. Ann. 396; *Schuyler* v. *Broughton*, 70 Cal. 282, 11 Pac. 719; *Lee* v. *Henderson*, 75 Tex. 190,